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April 11, 2011

By e-filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Docket No. EP 705, *Competition in the Railroad Industry*

Dear Ms. Brown:

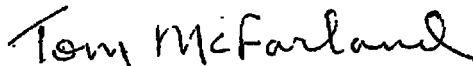
Hereby transmitted are Initial Comments in behalf of Mississippi Lime Company for filing with the Board in the above referenced matter.

ENTERED
Office of Proceedings

APR 11 2011

Part of
Public Record

Very truly yours,



Thomas F. McFarland
Attorney for Mississippi Lime Company

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BEFORE THE
SURFACE TRANSPORTATION BOARD

COMPETITION IN THE RAILROAD
INDUSTRY

) DOCKET NO. EP 705
)

INITIAL COMMENTS

MISSISSIPPI LIME COMPANY
3870 South Lindberg Blvd., Suite 200
St. Louis, MO 63127-1308

Commentor

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DUE DATE: April 12, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

COMPETITION IN THE RAILROAD)	DOCKET NO. EP 705
INDUSTRY)	

INITIAL COMMENTS

Pursuant to the Board's Notice served January 11, 2011, as amended by the Board's decision served February 4, 2011, MISSISSIPPI LIME COMPANY (MLC) hereby submits Initial Comments in this proceeding.

IDENTITY AND INTEREST OF COMMENTOR

MLC is a diversified producer of lime and calcium-based products. Its corporate headquarters are located at St. Louis, MO. Its production facilities are located at Ste. Genevieve, MO and Verona, KY. There are a variety of uses for its products, including steel production, road construction, chemical and industrial production, water treatment, pulp and paper production, and flue gas treatment.

MLC's focus in this proceeding is on its manufacturing facility near Ste. Genevieve, MO. MLC produces large volumes of lime and calcium-based items at that facility. Those products are shipped throughout the United States, into Mexico, and for export primarily via ports in California and Virginia. Rail transportation is the only logistically and economically feasible mode for a substantial portion of those shipments.

Attached to these Comments as Appendix 1 is a copy of a color-coded map of the rail lines in the Ste. Genevieve area. MLC's St. Genevieve facility is shown on that map at a rail station known as Mosher (Milepost 87.0), a short distance west of the town of Ste. Genevieve.

As shown on Appendix 1, MCL's facility is rail-served solely by Union Pacific Railroad Company (UP). Rail shipments from Mosher are transported to a UP rail yard at Ste. Genevieve, thence via UP trackage rights over BNSF Railway Company (BNSF) to Crystal City, MO, thence via UP to St. Louis for classification and shipment to destination.

The UP rail line going west from Mosher has not been used for many years except as an emergency route when rail facilities near the Mississippi River are flooded. The UP rail line between Bismark and Ste. Genevieve was formerly a main line of the Missouri & Illinois Railroad Company (M&I), which was a subsidiary of Missouri Pacific Railroad Company (MoPac).^{1/} M&I was merged into MoPac in 1978 and MoPac was acquired by UP in 1982. Notwithstanding that it has not been used as a main line for approximately 30 years, the former M&I rail line that bisects MLC's plant at Mosher continues to be technically classified by UP as a main line, even though the segment of that line between the MLC plant at Mosher and the rail yard at Ste. Genevieve is the only segment of that line that continues to be operated, and that segment is operated solely as an industrial lead track serving the MLC facility.

While MLC is a high-volume rail shipper, its traffic does not move in unit-train quantities that are most desirable by rail carriers. Nevertheless, the rail service that MLC received from M&I and from MoPac was excellent. In contrast, both the quantity and quality of the rail service

^{1/} M&I formerly operated a railroad car ferry from Ste. Genevieve over the Mississippi River to its trackage in Illinois.

provided by UP significantly declined as UP became much larger and more powerful by means of its acquisitions of MoPac, Southern Pacific, Chicago & North Western, Missouri-Kansas-Texas, and other rail carriers. As examples, UP train service from Ste. Genevieve to St. Louis was reduced from seven-days-per-week to five-days-per-week, and maintenance of UP's tracks within MLC's plant site was drastically reduced. These and other unsettling matters involving UP have caused MLC to participate in this proceeding to investigate potential means to obtain the service of a second rail carrier.

STATEMENT OF POSITION

MLC urges the Board to begin a rulemaking proceeding proposing to amend the regulations governing intramodal rail competition at 49 C.F.R. Part 1144 by eliminating the following provisions that are unduly inhibiting increased rail competition:

- (1) the prerequisite for competitive access relief in 49 C.F.R. § 1144.2(a)(1) that there be a showing of "an act that is contrary to the competition policies of 49 U.S.C. § 10101 or is otherwise anticompetitive"; and
- (2) the four factors set out in 49 C.F.R. §§ 1144.2(a)(1)(i)-(iv) that are to be taken into account in determining whether to grant competitive access relief; and
- (3) the provision at 49 C.F.R. § 1144.2(b)(3) relating to instances in which relief is sought "to remedy or prevent an act contrary to the competitive standards of this section."

JUSTIFICATION FOR POSITION

The current regulations governing intramodal rail competition at 49 C.F.R. Part 1144 were adopted in 1985 in *Intramodal Rail Competition*, 1 I.C.C.2d 822 (1985). The regulations

requiring a showing of anticompetitive behavior were applied strictly to preclude competitive access relief in *Midtech Paper Corporation v. CNW et al.*, 3 I.C.C.2d 171 (1986), and *Vista Chemical Co. v. Atchison, T. & S.F. Ry. Co.*, 5 I.C.C.2d 331 (1989). Viewing competitive access relief as effectively foreclosed by those decisions, shippers did not thereafter seek that relief. See, e.g., *Review of Rail Access and Competition Issues*, 3 S.T.B. 92 (1998), at 98 (“At the hearings, as in the past, some shippers complained that the ‘anticompetitive conduct’ standard of the competitive access regulations is too onerous, effectively precluding use of the competitive access remedy in an increasingly consolidated rail industry in which shippers are facing service failures such as those now being experienced in the West . . .”).

The “anticompetitive conduct” standard may have been justified when it was adopted 26 years ago. The Rock Island and Milwaukee Road bankruptcies were still fresh in mind. Conrail was still working its way out of financially burdensome through routes and joint rates. Overall railroad revenues were quite modest. In view of those circumstances, it is not surprising that the national rail policy in favor of adequate railroad revenues would be found to trump the national rail policy in favor of intramodal rail competition, leading to the adoption of regulations that effectively stifled increased rail competition.

Current circumstances in the railroad industry are diametrically different. The current financial condition of the Nation’s rail carriers is robust. That is indisputably the case notwithstanding the Board’s most recent decision that in 2009, no rail carrier in the United States was revenue adequate. See *Railroad Revenue Adequacy - 2009 Determination*, ____ S.T.B. ____, 2010 STB LEXIS 467 (Docket No. EP 552 [Sub-No. 14], decision served November 10, 2010). The Board’s determination in that respect is flatly contradicted in the real financial world. Thus,

in recently purchasing BNSF Railway Company for \$26.5 billion, Berkshire Hathaway's Warren Buffett surely was not acquiring a rail carrier that is revenue inadequate. In that respect, attached to these Comments as Appendix 2 is a copy of a Bloomberg article dated February 11, 2011, entitled "Buffett Says Pricing Power More Important Than Good Management," in which it is stated that "He (Mr. Buffett) has bought companies such as railroads, . . . whose pricing power stems from a dearth of competitive options available to clients . . .". Like BNSF, UP has substantial pricing power that it has used extensively in recent years, including during the recent recession.

Inasmuch as the policy in favor of rail revenue adequacy no longer outweighs the policy in favor of rail competition, it follows that the onerous "anticompetitive conduct" standard in the intramodal rail competition regulations is no longer justified. Accordingly, the Board should propose that such standard and related provisions be eliminated.

Elimination of the "anticompetitive conduct" standard would not result in "open access". As amended, 49 C.F.R. § 1144.2(a)(1) would provide that competitive access would be granted only if such relief "satisfies the criteria of 49 U.S.C. 10705 and 11102, as appropriate". The Board would continue to reconcile the national rail policies in favor of rail revenue adequacy and rail competition in determining whether competitive access under 49 U.S.C. § 11102(a) and/or 49 U.S.C. § 11102(c) would be "practicable and in the public interest," and whether a through route and joint rate would be "desirable in the public interest" under 49 U.S.C. § 10705(a). The Board routinely applies national rail policies in interpreting and applying statutory terms in particular circumstances and in light of changing conditions. The Board is also well versed in applying statutory terms without regulations that specify factors to be considered, as is the case in

interpreting "public convenience and necessity" in ruling on abandonments under 49 U.S.C. § 10903. The Board is fully qualified to do the same in regard to the standards contained in 49 U.S.C. §§ 11102(a) and (c) and 49 U.S.C. § 10705(a).

Elimination of the "anticompetitive conduct" provision of the intramodal rail competition regulations would not lead to an unwarranted diminution of rail carrier revenues. As just explained, elimination of those provisions would not result in "open access". The Board would protect rail carrier revenues, when warranted, in reconciling national rail policies while ruling on particular requests for competitive access relief.

Moreover, increased rail competition, or a potential for such an increase, often leads to more efficient shipper and/or rail carrier operations that result in an overall increase in rail traffic volume. A case in point is a project under active consideration whereby MLC would construct plant trackage at Ste. Genevieve for storage of approximately 125 railcars at very substantial cost. MLC would be more likely to incur that expense if the availability of rail service by a second rail carrier were to influence service improvement on the part of UP. The substantially improved plant operating efficiency that would result from that extensive on-site railcar storage capacity would enable MLC to ship up to an additional 1,000 carloads per year. The potential for increased rail competition would thus be likely to result in a substantial increase in MLC's overall traffic, not a decrease.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should institute a rulemaking proceeding proposing to amend the intramodal rail competition regulations at 49 C.F.R. Part

1144 by eliminating the following provisions that are unduly inhibiting increased rail competition:

- (1) the prerequisite for competitive access relief in 49 C.F.R. § 1144.2(a)(1) that there be a showing of "an act that is contrary to the competition policies of 49 U.S.C. § 10101 or is otherwise anticompetitive"; and
- (2) the four factors set out in 49 C.F.R. §§ 1144.2(a)(1)(i)-(iv) that are to be taken into account in determining whether to grant competitive access relief; and
- (3) the provision at 49 C.F.R. § 1144.2(b)(3) relating to instances in which relief is sought "to remedy or prevent an act contrary to the competitive standards of this section."

Respectfully submitted,

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Commentor



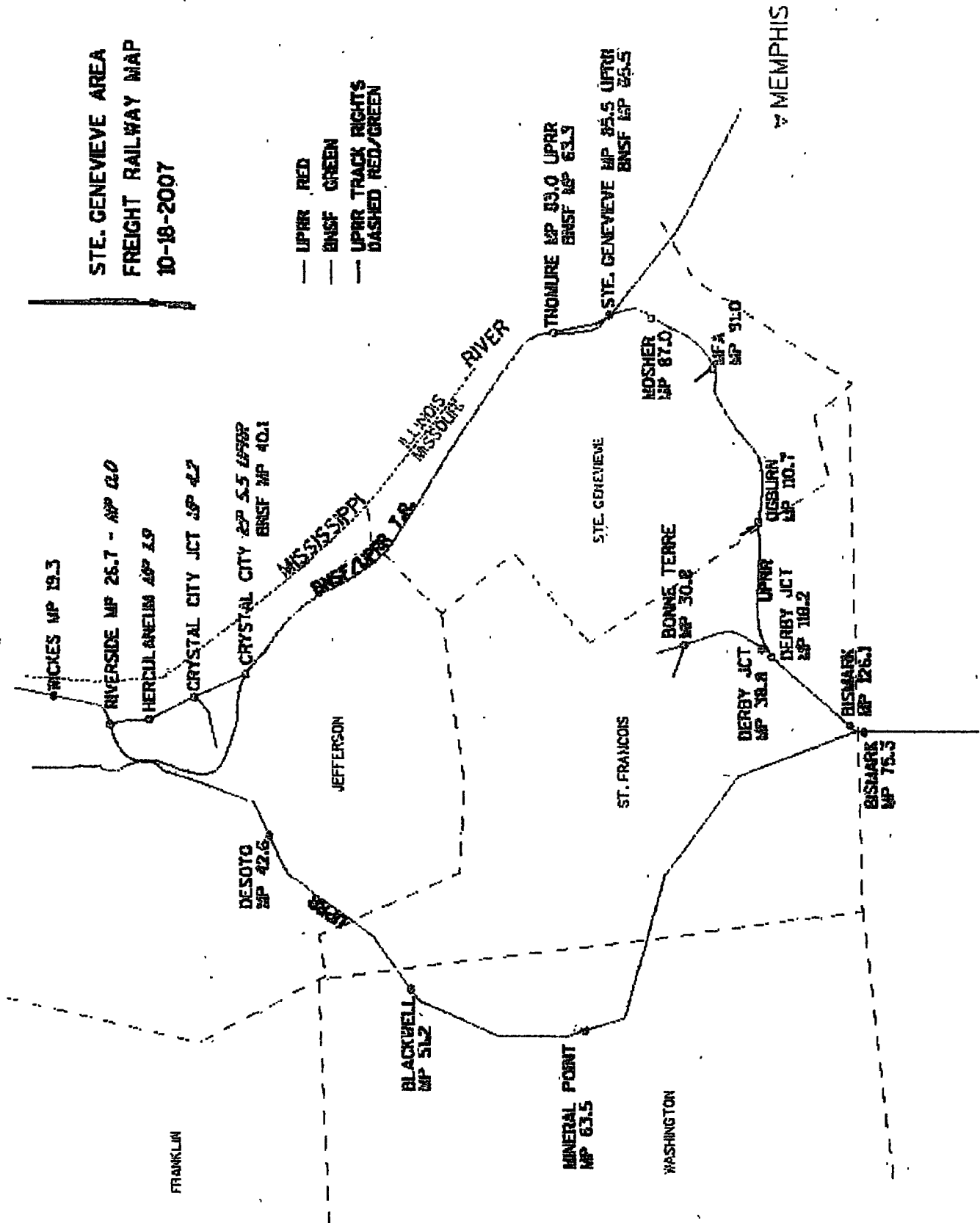
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DUE DATE: April 12, 2011

STE. GENEVIEVE AREA
FREIGHT RAILWAY MAP
10-18-2007

- UPRR RED
- BNSF GREEN
- - UPRR TRACK RIGHTS
DASHED RED/GREEN



Bloomberg

Appendix 2

Buffett Says Pricing Power More Important Than Good Management

By Andrew Frye and Dakin Campbell - Feb 18, 2011

Warren Buffett, the billionaire chief executive officer of Berkshire Hathaway Inc., said he rates businesses on their ability to raise prices and sometimes doesn't even consider the people in charge.

"The single most important decision in evaluating a business is pricing power," Buffett told the Financial Crisis Inquiry Commission in an interview released by the panel last week. "If you've got the power to raise prices without losing business to a competitor, you've got a very good business. And if you have to have a prayer session before raising the price by 10 percent, then you've got a terrible business."

Buffett, 80, accumulated the world's third-largest personal fortune through a career of stock picks and takeovers. He has bought companies such as railroads and electricity producers, whose pricing power stems from a dearth of competitive options available to clients. Buffett has also built stakes in firms like Coca-Cola Co. and Kraft Foods Inc., which rely on the appeal of their brands to attract and keep customers.

"The extraordinary business does not require good management," Buffett said in the interview, which was conducted on May 26 in Omaha, Nebraska.

The FCIC investigators focused on Buffett's investment in Moody's Corp., the bond-ratings firm blamed by lawmakers for handing out inflated credit grades during the housing boom. Buffett said he held stock in Moody's because the company's leading market share, along with that of rival Standard & Poor's, a subsidiary of McGraw-Hill Cos., gave the two firms flexibility in setting prices.

Pricing Power

"I knew nothing about the management of Moody's," said Buffett. "If you own the only newspaper in town, up until the last five years or so, you had pricing power and you didn't have to go to the office."

A dominant position can't prevent a bad manager from destroying a company over time, said Benjamin E. Hermalin, a professor of economics at the University of California, Berkeley's Haas

Buffett Says Pricing Power More Important Than Good Management

School of Business.

"If you have a really dominant position you can survive for quite a long time with bad management but eventually it will catch up to you," said Hermalin. "In the short run I would agree with Buffett but in the longer-run perspective there is something to be said for having a good manager."

Burlington Northern Santa Fe, the railroad Buffett bought last year for \$26.5 billion, owns more than 30,000 miles of track across the U.S. West connecting producers and distributors of coal, grain and consumer goods. Omaha-based Berkshire's power company, MidAmerican Energy Holdings Co., sells electricity to homes in the Great Plains and transports natural gas from Wyoming to California.

Praise From Buffett

Buffett routinely singles out and praises managers from Berkshire's more than 70 operating companies. MidAmerican Chairman David Sokol and Gregory Abel, the unit's CEO, are "two terrific managers," Buffett said last year in his letter to shareholders. The acquisition of Burlington Northern had the "additional virtue" of bringing the railroad's CEO, Matthew Rose, to Berkshire, Buffett said.

Buffett criticized Kraft Chief Executive Officer Irene Rosenfeld last year for her takeover of Cadbury Plc and the sale of the foodmaker's pizza brands. "Both deals were dumb," Buffett told Berkshire investors in May. Berkshire is the biggest shareholder of Kraft with a stake valued at \$3.3 billion at the end of December.

"In the short run, good management can make a stock pop but I follow what Warren's saying, especially because his point of view looks at the fundamentals," said Terry Connelly, dean of the Ageno School of Business at Golden Gate University in San Francisco, and a former managing director at Salomon Brothers. "Good management can't do anything with a bad case."

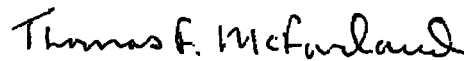
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To contact the editor responsible for this story: Dan Kraut at dkraut2@bloomberg.net Rick Green at rgreen18@bloomberg.net

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CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2011, I served the foregoing document, Initial
Comments, on all parties of record by first-class, U.S. mail, postage prepaid.



Thomas F. McFarland